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November 9, 2007

DOCKET FILE COPY ORIGINAL
FILED/ACCEPTED

NOV - 9 2007

Federal Communications Commission
Office of the Secretary

Marlene H. Dortch
Secretary
Federal Communications Commission
236 Massachusetts Avenue, NE
Suite 110
Washington, D.C. 20002

RE: Request; EB Docket No. 07-197

Dear Madame Secretary:

Enclosed for filing on behalf of parties Kurtis J. Kintzel, Keanan Kintzel, and all other Entities by which they do business before the Federal Communications Commission, is the original and 6 copies of the Request That Presiding Officer, Richard L. Sippel, Rule on the Motion of the Kintzels, et al., to Modify the Issues, Etc., in the above-referenced matter.

Sincerely,

Catherine Park, Esq.

Catherine Park, Esq.

Enclosures: Original + 6 Copies

No. of Copies rec'd 046
List ABCDE

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FILED/ACCEPTED
NOV - 9 2007
Federal Communications Commission
Office of the Secretary

In the Matter of)
)
Kurtis J. Kintzel, Keanan Kintzel, and all) EB Docket No. 07-197
Entities by which they do business before the)
Federal Communications Commission)
)
Resellers of Telecommunications Services)
)
To: Presiding Officer, Richard L. Sippel)
(Chief ALJ))

**REQUEST THAT PRESIDING OFFICER, RICHARD L. SIPPEL, RULE ON THE
MOTION OF THE KINTZELS, ET AL., TO MODIFY THE ISSUES, ETC.**

Kurtis J. Kintzel, Keanan Kintzel, and all Entities by which they do business before the Federal Communications Commission ("the Kintzels, et al.") submit this Request That Presiding Officer, Richard L. Sippel, Rule on the "Motion of the Kintzels, et al., to Modify the Issues, Etc." The "Motion of the Kintzels, et al., to Modify the Issues" ("Motion to Modify") was filed on October 26, 2007 and currently appears in the electronic filing system (ECFS). There may be a misunderstanding as to whom the "Motion to Modify" is directed. It is, and always was, directed to the Presiding Officer, Richard L. Sippel, although his name does not appear in the caption. The Kintzels, et al., submit this Request to clear up the misunderstanding; to posit that the Enforcement Bureau may be responsible for the misunderstanding; to submit that 47 C.F.R. § 1.209 (identification of responsible officer in pleading) has no analogue in civil courts, and that the rule is not clearly drafted; and to request that the Presiding Officer rule on the Motion to Modify.

I. The Enforcement Bureau has propounded the incorrect contention that the Motion

to Modify is directed to the full Commission, rather than to the Presiding Officer.

The Kintzels, et al., note that NASUCA's Petition to Intervene was submitted without the Presiding Officer's name in the caption, yet the Presiding Officer seems to have immediately accepted that the Petition was directed to him. The Kintzels, et al., hereby posit that the reason for such clarity as to the NASUCA pleading and lack of clarity as the pleading of the Kintzels, et al., stems from the actions of the Enforcement Bureau, which has propounded the incorrect contention that the Motion to Modify was directed to the full Commission, rather than to the Presiding Officer.

To wit, the Enforcement Bureau, after being served with the Motion to Modify on October 26, 2007, filed and served on the accused parties an Opposition, on November 2, 2007, in which the Bureau contends that the Motion to Modify is directed to the full Commission, rather than to the Presiding Officer, and that such a "procedural defect" requires that the Motion to Modify be dismissed. *See* Opposition, pp. 1-2. The Kintzels, et al., refuted the Bureau's contentions as utterly lacking in merit in a Reply brief (sent for filing via express mail on November 3, 2007), in which the Kintzels, et al., reiterate that the Motion to Modify is directed to the Presiding Officer, filed with the original and 6 copies (as required for all pleadings to be acted upon by an ALJ), and that the Bureau's insistence that the pleading is directed to the full Commission is unreasonable and baffling. *See* Reply, pp. 1-4.

The caption of the Motion to Modify did not name the Presiding Officer—nor did it name the full Commission. The Kintzels, et al., posit that the Enforcement Bureau's contentions in that Opposition brief, and in the subsequent Motion to Dismiss the Kintzels, et al.'s, Seriatim Informal Requests, planted the suggestion that the Motion to Modify was improperly filed and improperly directed to the full Commission, and that such suggestion took root and led to the

unfortunate and incorrect conclusion that such Motion to Modify was intended to be acted upon by the full Commission.

There seems to have been no confusion as to whom NASUCA's Petition to Intervene was directed, despite the fact that the Presiding Officer is not named in the caption of that pleading. The Kintzels, et al., hereby posit that the Enforcement Bureau never alleged that the Petition to Intervene was directed to the full Commission—and perhaps that is why there was no confusion about that pleading.

II. The Kintzels, et al., submit that they are willing to refile the Motion to Modify with the Presiding Officer's name in the caption, and submit that the rule, as drafted, is unclear.

The Kintzels, et al., are willing to refile the Motion to Modify, with the Presiding Officer's name in the caption, if the Presiding Officer will not consider the Motion to Modify unless his name appears in the caption. The Kintzels, et al., were indeed put on notice that they must be fully cognizant of 47 C.F.R. Part I, Subpart A and Subpart B. However, 47 C.F.R. § 1.209, identification of responsible officer in pleading, is completely strange to a lawyer not accustomed to FCC procedure, and as drafted does not explain how such identification is to be accomplished. In fact, § 1.209 (identification of responsible officer in pleading) has no analogue in civil courts; only by reference to the Enforcement Bureau's recently filed "Requests for Admissions," which contain "To: [NAME]" in the caption, did it become apparent to counsel to the Kintzels, et al., what "identification of responsible officer in pleading" could possibly refer to, and where in the caption such identification might be placed.

Under 47 C.F.R. § 1.229(b)(3), motions to enlarge, change, or delete issues may be

considered although untimely filed, for good cause shown.¹ Under 47 C.F.R. § 1.229(c), such motions also must be considered even in the absence of good cause, if “initial examination of the motion demonstrates that it raises a question of probable decisional significance and such substantial public interest importance as to warrant consideration in spite of its untimely filing.” *Id.* A brief examination of the Table of Contents provided with the Motion to Modify should fully satisfy the legal standard set forth in § 1.229(c).

Wherefore, the Kintzels, et al., reiterate that the Motion to Modify is and always was directed to the Presiding Officer, Richard L. Sippel, and request that the Presiding Officer, Richard L. Sippel, rule on the Motion to Modify. The Kintzels, et al., also reiterate their willingness to refile the Motion to Modify with the Presiding Officer’s name in the caption.

Respectfully Submitted,



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¹ The Motion to Modify, filed on October 26, 2007, was already late-filed, under 47 C.F.R. 1.229 (such motions must be filed within 15 days after the full text or summary of the order designating the case for hearing is published in the *Federal Register* [in the instant case, the order was published on September 27, 2007]; the Kintzels, et al., were not able to obtain legal counsel until the very day of the deadline, October 12, 2007).

Certificate of Service

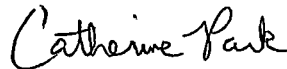
I HEREBY CERTIFY that a true and correct copy of the foregoing Request That Presiding Officer, Richard L. Sippel, Rule on the Motion of the Kintzels, et al., to Modify the Issues, Etc., was served on this 9th day of November 2007, by hand delivery, on the following:

Marlene H. Dortch
Secretary
Federal Communications Commission
236 Massachusetts Avenue, NE
Suite 110
Washington, D.C. 20002

And by U.S. Mail, First Class, on the following:

Richard L. Sippel, Chief Administrative Law Judge
Federal Communications Commission
445 12th Street, SW, Room 1-C861
Washington, D.C. 20554

Hillary DeNigro, Chief
Michele Levy Berlove, Attorney
Investigations & Hearings Division, Enforcement Bureau
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